

Re Panglobal Bhd & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D4-24-424 OF 1998

ABDUL AZIZ J

14 SEPTEMBER 1998

Companies and Corporations — *Arrangement, scheme of — Restraint of proceedings — Whether restraining order should be granted — Companies Act 1965 s 176(10)*

This was an application by the applicants for a restraining order. AMMB International (Labuan) Ltd ('AMIL') — a scheme creditor — which held a debenture on the assets of LTL ('the third applicants'), had called in the loan granted to the first applicant and were entitled at any time to enforce their rights under the debenture, including the right to appoint a receiver and manager. In addition, the fifth applicants MPG had also assigned to Phileo Allied Bank certain rentals as one of the securities for another loan. It was submitted that the appointment of a receiver and manager and/or the enforcement of the assignment would prejudice the promotion of the scheme.

Held:

- (1) Only further proceedings in a pending action or proceeding may be restrained under s 176(10) of the Companies Act 1965. This application ought to be served on the creditors whose actions or proceedings were sought to be restrained, so that they may have an opportunity to oppose the application for the restraining order (see pp 591I and 592A).
- (2) As the applicants feared that AMIL might appoint a receiver and manager at any time now, and that if that were to happen they would be deprived of any opportunity to promote the scheme, the court granted an interim order, to last for two weeks, restraining AMIL from enforcing their rights under the debenture (see p 592D-E).
- (3) Due to lack of information about the incidents and terms of the assignment, the court declined to make any restraining order in respect of the assignment (see p 592F-G).

[Bahasa Malaysia summary]

Ini merupakan satu permohonan oleh pemohon-pemohon untuk perintah penyekatan. AMMB International (Labuan) Ltd ('AMIL') — si piutang skim — yang memegang debentur ke atas aset-aset LTL ('pemohon ketiga'), telah menuntut pembayaran pinjaman yang diberikan kepada pemohon pertama dan berhak pada bila-bila masa untuk menguatkuasakan hak-hak mereka di bawah debentur tersebut, termasuk hak untuk melantik seorang penerima dan pengurus. Tambahan pula, pemohon kelima iaitu MPG juga telah menyerahkan kepada Bank Phileo Allied sewa-sewa tertentu sebagai cagaran untuk

- A** satu lagi pinjaman. Ia diujahkan bahawa perlantikan seorang penerima dan pengurus dan/atau penguatkuasaan penyerahhakan tersebut akan memudaratkan promosi skim tersebut.

Diputuskan:

- B** (1) Hanya prosiding lanjut dalam tindakan atau prosiding yang menunggu penyelesaian boleh disekat di bawah s 176(10) Akta Syarikat 1965. Permohonan ini sepatutnya disampaikan kepada si piutang yang mana tindakan atau prosiding mereka hendak disekat, supaya mereka berpeluang untuk menentang permohonan untuk perintah penyekatan (lihat ms 591I dan 592A).
- C** (2) Oleh kerana pemohon-pemohon khuatir bahawa AMIL mungkin akan melantik seorang penerima dan pengurus pada bila-bila masa sekarang, dan sekiranya ini berlaku mereka akan kehilangan sebarang peluang untuk mempromosikan skim tersebut, mahkamah memberikan perintah interim, yang berkuatkuasa selama dua minggu, yang menahan AMIL daripada menguatkuasakan hak-hak mereka di bawah debentur tersebut (lihat ms 592D-E).
- D** (3) Disebabkan kekurangan maklumat mengenai insiden dan syarat penyerahhakan tersebut, mahkamah enggan membuat sebarang perintah penyekatan berkenaan dengan penyerahhakan tersebut (lihat ms 592F-G).]
- E**

Notes

- F** For a case on restraint of proceedings pertaining to a scheme of arrangement, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) para 17.

Legislation referred to

Companies Act 1965 s 176(10)

- G** *Bharti Seth (Bharti Seth & Associates)* for the applicants.

Cur Adv Vult

Abdul Aziz J: As I have said earlier, this is a D4 case that is before me in my capacity as a vacation judge. The last day of the current court vacation is 19 September.

- H** After hearing counsel on several occasions, particularly on the question posed by me as to whether, in view of the restraining order sought, this application ought to be served on the creditors that will be affected by the restraining order, I make the following decisions and orders.

- I** I postpone this application to 21 September for mention before the learned D4 judge.

I am of opinion that only further proceedings in a pending action or proceeding may be restrained under s 176(10) of the Companies Act 1965.

I am also of opinion that this application ought to be served on the creditors whose actions or proceedings are sought to be restrained, so that they may have an opportunity to oppose the application for the restraining order. A

Learned counsel for the applicants has indicated that further proceedings in the pending actions listed in exh 8 to encl (2) need not, at least for the time being, be restrained because the creditors in those actions will not be included among the scheme creditors. B

There is, therefore, only one matter that might be regarded as a pending action or proceeding by a scheme creditor. The scheme creditor is AMMB International (Labuan) Ltd ('AMIL'), who hold a debenture on the assets, etc of LTL ('the third applicants') as one of the securities for a loan of RM211,534,000 granted by AMIL to PGB ('the first applicants'). AMIL have called in the loan and they are entitled at any time now to enforce their rights under the debenture, including the right to appoint a receiver and manager of the assets, etc of LTL. C

I order that this application be served on AMIL.

As the applicants fear that AMIL may appoint a receiver and manager at any time now, and that if that were to happen they will be deprived of any opportunity to promote the scheme, I make an interim order, to last for two weeks from today, restraining AMIL from enforcing their rights under the debenture. D

Besides the AMIL debenture, there is only one other matter relating to the question of pending actions and proceedings about which counsel has expressed concern. It is an assignment by MPG ('the fifth applicants') to Phileo Allied Bank of certain rentals as one of the securities for a loan of RM163,749,000. It was feared that if the assignment were enforced and the rentals were paid to the assignee, the acceptability of the scheme might be prejudiced. Counsel felt that a restraining order in respect of the assignment was necessary. Due to lack of information about the incidents and terms of the assignment, I have not been able to assess whether, in respect of the assignment, it can possibly be said that there is a pending action or proceeding. Neither have I been able to appreciate the manner in which the enforcement of the assignment is likely to prejudice the acceptability of the scheme. I therefore decline to make any restraining order in respect of the assignment. The applicants are given the liberty to make a separate application for a restraining order specifically in respect of the assignment, giving by affidavit the necessary information in support. E F G

Order accordingly.

H
Reported by Loo Lai Mee